



September 1, 1999

Mr. Vernon M. Arrell
Commissioner
Texas Rehabilitation Commission
4900 North Lamar Boulevard
Austin, Texas 78751-2399

OR99-2468

Dear Mr. Arrell:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 126992.

The Texas Rehabilitation Commission (the "commission") received several requests from the same requestor for information related to two commission clients, as well as a former commission employee. In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive.¹ You contend that the submitted records are excepted from required public disclosure by sections 552.103 and 552.107 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.²

Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information. We further note that among the records you submitted to our office for review you included what appear to be documents filed with a court. To the extent the submitted information has been filed with a court, it is part of the public record and must be released. See *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding).

is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The commission must meet both prongs of this test for information to be excepted under 552.103(a).

In this case, we conclude that the commission reasonably anticipates litigation relating to the former commission employee. We agree that the submitted documents relate to the reasonably anticipated litigation. Therefore, the commission may withhold the documents from disclosure under section 552.103(a).³ In reaching this conclusion, however, we assume that the opposing party in the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has concluded.⁴ Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Finally, we note that some of the submitted information is subject to access provisions outside of the Public Information Act. See Open Records Decision No. 598 at 1 (1991) (Public Information Act exceptions are not applicable to medical records). You submitted to this office for review certain responsive medical records. Access to the submitted medical records is governed by the Medical Practice Act (the “MPA”), article 4495b of Vernon’s Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

³We note that this office has previously addressed certain related matters. In Open Records Letter No. 99-2320 (1999), the commission requested a ruling from this office concerning information relating to the former commission employee at issue and “insurance or indemnity agreements covering the acts of TRC employees.” We resolved that request for a ruling under section 552.103 of the Government Code.


⁴We note that some of the information in the submitted documents is also confidential by law. Therefore, once litigation has concluded should there be a subsequent request for this information, we advise the commission to exercise caution and seek a ruling from this office concerning the records. See Gov’t Code §§ 552.352, 552.101 (common-law privacy); see also section 5.08 of V.T.C.S. article 4495b (access to medical records is not governed by chapter 552 of Government Code, but rather provisions of Medical Practice Act).

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. These medical records are confidential, with access provided only as outlined under the MPA.⁵ Open Records Decision No. 598 (1991).

As we resolve your request under section 552.103, we need not address your claimed exception under section 552.107 at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 126992

⁵We note that the requestor submitted to the commission signed "Medical Authorization" forms, which set out the the information covered by the release, and the persons to whom the information is to be released.

encl: Submitted documents

cc: Mr. Steven K. DeWolf
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(w/o enclosures)